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HAROLD B. WILLEY,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 281

STATE OF TEXAS AND THE RAILROAD COMMISSION OF TEXAS; CORPORATION COMMISSION OF OKLAHOMA; AND STATE OF NEW MEXICO AND OIL CONSERVATION COMMISSION OF NEW MEXICO, *Petitioners,*

vs.

STATE OF WISCONSIN AND PUBLIC SERVICE COMMISSION OF WISCONSIN; CITY OF DETROIT, MICHIGAN; CITY OF KANSAS CITY, MISSOURI; CITY OF MILWAUKEE, WISCONSIN; COUNTY OF WAYNE, MICHIGAN; AND THE FEDERAL POWER COMMISSION, *Respondents*

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BRIEF FOR PETITIONERS

Opinions Below

The opinion of the Court of Appeals (R. 1842-1856) is reported in 205 F. 2d 706. The findings and opinions of the Federal Power Commission (R. 1682-1835) are reported in 10 F. P. C. 246, 90 PUR (NS) 325.

Jurisdiction To Review

Jurisdiction of this Court rests upon Title 15, United States Code, Section 717r(b), and Title 28, United States Code, Sections 1254(1) and 2101. The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on May 22, 1953 (R. 1858). The petition was filed on August 22, 1953 and was granted on January 18, 1954.

Question Presented

Whether sales of natural gas to interstate pipe line companies by an independent producer and gatherer, consummated by delivery as the last step in the gathering process, are subject to regulation by the Federal Power Commission under the Natural Gas Act, where the Commission finds upon substantial evidence that the sales were made during the course of production and gathering and that its regulation of such sales would be inconsistent and would substantially interfere with state regulatory functions with respect to production and gathering.

Statute Involved

The statute involved is the Natural Gas Act (Act of June 21, 1938, Ch. 556, 52 Stat. 821, as amended by Act of February 7, 1942, Ch. 49, 46 Stat. 82, and Act of July 25, 1947, Ch. 333, 61 Stat. 459, 15 U.S.C. Sec. 717). The pertinent provisions of the Act are printed as Appendix A to this brief.

Statement

By order dated August 16, 1951, the Federal Power Commission (Commission) determined that Phillips Petroleum Company (Phillips) is not a natural gas company within the meaning of the Natural Gas Act and that the Commission has no jurisdiction to regulate its rates (R. 1682-1755).

Commissioner Draper concurred specially with the majority (R. 1753-1755) and Commissioner Buchannnon dissented (R. 1755-1835). This order resulted from an extensive investigation to determine (1) whether Phillips is a "natural gas company" within the meaning of the Act, and (2) if so, whether any of its rates subject to the jurisdiction of the Commission are unjust or unreasonable. By order dated April 16, 1951, the Commission postponed the consideration of rates until its jurisdiction could be determined (R. 1671-1680). A lengthy hearing was held in Bartlesville, Oklahoma, before a presiding examiner, the hearing beginning April 3, 1951, and ending May 23, 1951. No report was filed by the presiding examiner, the Commission having ordered the omission of his report in conformance with its rules and upon the stipulation of all parties (R. 1680-1681).

Petitioners are vested, under the laws of the State of Texas [1] Oklahoma [2] and New Mexico [3] with the jurisdiction, duty and authority to administer and enforce the laws of their respective states with respect to the development, production, gathering, conservation, marketing and utilization of the oil and gas resources of the state. Petitioners' statutes and regulations constitute a comprehensive program of regulation of the production and gathering of natural gas, including the unitization of fields, proration, ratable taking, well spacing, drilling of wells, effective use of casinghead gas, avoidance of waste, and all matters looking toward the conservation and greatest ultimate recovery of natural gas. Also included is the establishment of minimum prices as a condition to production where such regulation is conducive to the furtherance of state policies and programs with respect to conservation.

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[1] Title 102 Rev. Civ. Stat. of Tex. (1925, as amended).
[2] Title 52, Okl. Stat. 1951.
[3] Ch. 69, N. Mex. Stat., 1941.

Because this investigation threatened to bring sales by independent producers and gatherers of natural gas in interstate commerce for resale under regulation by the Commission, which would result in serious conflict or interference with the exclusive conservation powers and duties enumerated above, Petitioners intervened in the proceeding before the Commission and presented extensive evidence pointing out in detail how regulation by the Federal Power Commission of sales such as Phillips' would seriously conflict with the exercise of their regulatory powers. Petitioners also intervened in the Court of Appeals, filed briefs and presented oral argument in support of their contention. Likewise urging that regulation of Phillips' rates would be inconsistent with and would seriously interfere with their regulations, the producing states of Arkansas, Kansas, Louisiana and Mississippi also intervened in the proceeding before the Commission in opposition to the Commission's jurisdiction (R. 6, 1686-1687). The Commission, however, excluded the evidence offered by those states upon the ground that no gas involved in this particular proceeding was produced in those states. Intervening in support of the Commission's jurisdiction, were, among others, the five petitioners in the court below, *i. e.*, the State of Wisconsin, the Public Service Commission of Wisconsin, City of Detroit, Michigan, City of Kansas City, Missouri, City of Milwaukee, Wisconsin, and County of Wayne, Michigan, all of which are Respondents in this court.

The Commission's staff concentrated its evidence upon Phillips' sales of natural gas to five natural gas companies, which companies are subject to the jurisdiction of the Commission under the Natural Gas Act. Those companies were Michigan-Wisconsin Pipe Line Company, Panhandle Eastern Pipe Line Company, Cities Service Gas Company, Independent Natural Gas Company, and El Paso Natural Gas Company. The gas sold by Phillips to these companies is in

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part produced by Phillips and in part purchased by Phillips from other producers. From the wells, Phillips moves the gas through one of several systems of pipe lines, known in the industry as "gathering lines" (R. 365-374), to one of several gasoline plants, all located in the particular field where the gas is produced (R. 1215, 350).

At these gasoline plants, Phillips processes the gas for the extraction of the liquid hydrocarbons and for the removal of impurities to make the gas salable. The record indicates that approximately 50% of the gas produced by Phillips is casinghead gas, or gas produced from oil wells in conjunction with oil.[4] The production of oil is the controlling element in the production of this gas (R. 322). Much of the casinghead gas which is processed by Phillips is not produced by Phillips but is purchased at the wellhead on a form of contract which expressly makes the purchase of casinghead gas subservient to the production of oil and requires Phillips to return the residue gas to the producer for use in lease operations (R. 1158, 1161).

In many respects, although in legal effect a contract of purchase and sale, these contracts partake of the nature of a service contract in which the operations of the parties are interdependent and the proceeds shared. Thus, Phillips is permitted to sell only that part which is surplus or not returned to the oil producers (R. 1158-1177, 339). The price which Phillips pays under these contracts depends in part upon the gasoline content and in part upon the price which Phillips receives for the sale of the residue gas (R. 361-362), Phillips accounting to the producers for a sub-

[4] Exhibits 169-177, R. 1298-1639, are copies of the reports required by the Railroad Commission of Texas and the Oil Conservation Commission of New Mexico to show the volumes processed at the various plants within those states. These reports show the comparative volumes of casinghead gas and gas well gas processed in each plant. The volumes of gas delivered to Cities Service Gas Company, all of which is casinghead gas (R. 291), are described in the testimony of George C. Roth (R. 282-284).

stantial portion (from one-half to two-thirds) of the proceeds (R. 1164, 339). After processing, the residue gas which is available for sale is then delivered to various purchasers and substantial quantities are used by Phillips, but the predominant part of the residue gas is delivered to the purchasing pipe line company, delivery being made at the exhaust of the gasoline plants (R. 282, 292-293, 628, 1216-1223, 355, 1240, 1245). These plant exhausts are all within the plant fences (R. 872-894, 291) and vary in length from 200 feet to 1490 feet (R. 1646). Petitioners have for many years regulated Phillips in all these operations as they have been carried on in their respective states. In addition, Phillips has always been regarded by Petitioners as an independent producer, gatherer and processor of natural gas (R. 486-487).

On the basis of the record as a whole, which consisted of almost 10,000 pages, the Commission found that Phillips' sales of gas, and the movement and processing of the gas which precedes the sales, including the delivery at the exhaust of the processing plants, are all a part of its gathering business within the meaning of the production and gathering clause of Section 1(b) of the Act and that the Commission therefore had no jurisdiction to regulate these sales (R. 1682-1755).

In addition to its finding that Phillips' sales are a part of gathering, the Commission, paraphrasing this Court's language in *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U. S. 682, 690 (1947), found as a fact upon the basis of the evidence presented by Petitioners that the Commission's regulation of Phillips' sales would be inconsistent with or would substantially interfere with state regulation by the state in which the gas is produced. This finding was the sole ground upon which Commissioner Draper concurred with the majority (R. 1753-1755).

The Commission therefore found that Phillips is not a natural gas company within the meaning of the Natural Gas Act and ordered the proceeding terminated. Upon review, the Court of Appeals for the District of Columbia, Judge Clark dissenting, reversed the Order of the Commission, and directed the Commission to proceed to regulate Phillips' sales of gas (R. 1850).

Specification of Errors

1. The Court of Appeals erred in failing to hold that the Commission is without jurisdiction to regulate Phillips' sales because such regulation by the Commission would be inconsistent or a substantial interference with Petitioners' regulation.

2. The Court of Appeals erred in holding that the Commission's findings that its regulation would be inconsistent or a substantial interference with Petitioners' regulation were immaterial.

3. The Court of Appeals erred in failing to give effect to the Commission's finding that Phillips' sales are made during the course of production and gathering, or at least are an exempt incident thereof.

4. The Court of Appeals erred in holding that Petitioners have no power to regulate Phillips' sales.

Summary of Argument

I

The statutes of Texas, Oklahoma and New Mexico provide for a comprehensive scheme of regulation by Petitioners of production and gathering for the conservation of oil and gas and the protection of correlative rights. Petitioners' regulatory activities cover all phases of production and gathering, including minimum prices, unitization, well spacing, drilling of wells, proration, ratable taking, saving of casinghead gas, secondary recovery operations,

prevention of premature abandonment, and the assurance of the greatest possible ultimate recovery of the oil and gas in the ground. The price at which the gas is sold is and must be considered by Petitioners in their regulation of all of these activities. The evidence shows that there is a direct relationship between price and conservation and that control of price by the Commission would inevitably create conflict and interference with Petitioners' regulatory functions.

Under this Court's decision in *Interstate Natural Gas Co. v. Federal Power Commission,* 331 U.S. 682 (1947), the Commission has no jurisdiction to regulate sales even of an interstate pipe line company when the sales are made during the course of production and gathering if regulation of such sales by the Commission would be inconsistent or substantially interfere with state regulatory functions. Although it is submitted that independent producers and gatherers are not covered by the Act regardless of conflict, it is clear that independents' sales could not be regulated under circumstances whereby the same kind of sale by a natural gas company would not be subject to the Commission's jurisdiction. If, therefore, it is shown that regulation by the Commission of sales by independents during production or gathering would conflict with state regulatory functions that is an additional ground for denying the Commission's jurisdiction. The Commission found, upon the basis of substantial evidence, that its regulation of Phillips' sales would conflict with Petitioners' regulations. The Commission was therefore correct in holding that it does not have jurisdiction to regulate Phillips as a natural gas company.

II

The Court of Appeals was wrong in holding that the Commission's finding that its regulation would conflict with

Petitioners' regulation was immaterial. In so doing, the court overlooked the importance of conservation and ignored the meticulous care with which Congress left the control of production and gathering to the states, free from any control or interference by the Commission. This Court has held that the conservation of natural gas is a matter of legitimate local concern and that the Commission, under the Natural Gas Act, has no direct control over production and gathering. Instead of conflict being immaterial, this Court, in *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682 (1947), specifically held that the Commission's jurisdiction would not attach if its regulation of sales made during the course of production and gathering would conflict with state regulation.

The Commission's findings that Phillips' sales are made "during the course of production and gathering" are supported by substantial evidence and are therefore conclusive upon the Court. Natural Gas Act, Section 19(b), 15 U.S.C. 717r(b). The determination of what constitutes production and gathering is a matter for the Commission and the only function of a reviewing court is to determine whether the Commission's interpretation has "warrant in the record" and a "reasonable basis in law." *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 131 (1944).

Argument

I

REGULATION BY THE FEDERAL POWER COMMISSION SUCH AS DECREED BY THE COURT BELOW WOULD SUBSTANTIALLY CONFLICT WITH STATE REGULATORY POWERS.

A. *The Commission's Decision Is Consistent With This Court's Decision In Interstate Natural Gas Co.* v. *Federal Power Commission, 331 U.S. 682.*

While the decision of the Commission was based upon two grounds, Petitioners believe that they are particularly

qualified to discuss the second ground of the decision. They will therefore leave to Petitioners in No. 280 and No. 418 the discussion of the first ground of the decision.

This case presents for the first time in this Court the question of the Federal Power Commission's jurisdiction to regulate sales of gas in the field by an independent producer and gatherer. The decision of the Court of Appeals would require the Commission, for the first time and in the face of its consistent construction of the Natural Gas Act to the contrary, to go into the field of production and regulate the price of gas sold in the field by a company whose only function with respect to that gas is its production and gathering. In so doing, the Commission would be invading an area which has heretofore been unregulated by a federal agency. It would be invading an area which, if regulated at all, has been regulated by the states in the interests of conservation.

It is undisputed that the sales here involved are made at arm's length in the field of production. There is no contention that Phillips is affiliated with any company regulated by the Commission as a natural gas company or that Phillips transports the gas beyond the limits of the field in which the gas is produced. With the exception of two of the sales, it is undisputed that Phillips' activities are begun and completed wholly within one state, even though all or part of those activities may be technically "in" interstate commerce. Even as to those two sales in which some of the gas moves in gathering lines that cross the Oklahoma-Texas border, [5] it is undisputed that Phillips' activities are begun and completed wholly within the confines of the Hugoton Field and that the crossing of state lines by Phil-

[5] In the case of Phillips' sales to Michigan-Wisconsin and Panhandle Eastern (Hansford Plant), Phillips' gathering lines extend into both Texas and Oklahoma (R. 810, 812, 1244).

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lips is brought about by the fact that the geological reservoir which forms that field is so situated that it lies across part of three different states (Texas, Oklahoma and Kansas).

All of Phillips' activities with respect to the sales here involved, as well as those of all other producers and gatherers, have at all times been subject to the conservation regulations of Petitioners. Those regulations are designed to prevent the waste of gas and to preserve the supply of gas for the benefit of all consumers for as long a period as possible. They have been consistently sustained by this Court, even where the gas was destined for interstate commerce. If the Federal Power Commission is to have jurisdiction to regulate the rates for gas sold in the field, then both state and federal agencies must operate in the same areas and upon the same subjects, yet with different and very likely inconsistent purposes. In such a situation, conflict or interference with one by the other is inevitable, with the resulting necessity that one must bow to the other.

The Commission recognized this problem and faced the issue squarely. In its opinion, the Commission gave two reasons for its conclusion that it does not have jurisdiction to regulate independent producers and gatherers such as Phillips. One was its considered judgment, supported by the legislative history of the Natural Gas Act, this Court's decisions construing the Act, and its own previous consistent administrative interpretation of the Act, that Congress did not intend for it to have such power (R. 1740-1744). The other equally conclusive reason, and the only one which we discuss here, was based upon the Commission's findings that its regulation of field prices would necessarily and inevitably conflict and interfere with state conservation regulations (R. 1745-1747).

The findings that conflict with state regulatory authority would result were based upon the evidence presented by Petitioners and upon the Commission's precise knowledge of the effect of its own regulation. The legal conclusion that such conflict prohibited the Commission from regulating Phillips' rates was predicated upon this Court's language in *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U. S. 682, 690 (1947). In that case this Court, in dealing with an interstate transmission company, and not an independent producer and gatherer, said:

> "In denying the Federal Power Commission jurisdiction to regulate the production or gathering of natural gas, it was not the purpose of Congress to free companies such as petitioner from effective public control. The purpose of that restriction was, rather, to preserve in the States powers of regulation in areas in which the States are constitutionally competent to act. Thus the House Committee Report states: 'The bill takes no authority from State Commissions, and is so drawn as to complement and in no manner usurp State Regulatory authority. . . .' Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern. It was the intention of Congress to give the States full freedom in these matters. *Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory functions, the jurisdiction of the Federal Power Commission does not attach.* But such conflict must be clearly shown. Exceptions to the primary grant of jurisdiction in the section are to be strictly construed. It is not sufficient to defeat the Commission's jurisdiction

over sales for resale in interstate commerce to assert that in the exercise of the power of rate regulation in such cases, local interests may in some degree be affected."[6]

Although we do not believe that this language was meant to apply to independent producers and gatherers in the sense of requiring specific proof of conflict on a case by case basis, nevertheless if it does apply in that sense to independent producers and gatherers, the evidence in this case fully supports the finding of the Commission that the test is met.

It is to be observed that this Court in speaking of a conflict did not so much as indicate that the conflict is to be one of rate regulation against rate regulation or that it must be one of any other price regulation against price regulation. Quite to the contrary, this Court pointed out that the conflict could come about by "*rate regulation*" on the part of the Commission and regulation by the states of "the *physical production and gathering* of natural gas in the interests of conservation or any other consideration of legitimate local concern." Thus, any argument that the states have no power to regulate the particular sales involved is wholly beside the point. It is sufficient that rate regulation of sales by the Commission will interfere with the exercise of any legitimate conservation power of the states.

The evidence in this case convincingly demonstrates that regulation of the sales of Phillips by the Commission would inevitably result in interference with the exercise in many specific respects of admittedly legitimate conservation powers of these Petitioners.

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[6] Unless otherwise indicated, all emphasis in quotations in this brief is supplied.

B. *The Evidence Shows That Rate Regulation By The Commission Would Cause Substantial Conflict With State Regulation.*

The evidence before the Commission concerning the effect of rate regulation of field prices by the Commission upon state conservation programs, practices and policies was both complete and detailed. The evidence presented by these Petitioners alone on that one point covers approximately 215 pages of the printed record. Much additional evidence was offered by other states but was excluded by the presiding examiner on the ground that sales in those states were not then the subject of the Commission's inquiry.

The evidence presented by Petitioners consisted of the testimony of officials and employees of the state regulatory agencies charged with the duty of establishing and enforcing the states' conservation programs and policies—in brief, the men who know those programs and policies best. In the case of Texas, the principal witnesses were W. J. Murray, Jr., Member, and Jack K. Baumel, Chief Engineer, of the Railroad Commission of Texas. For Oklahoma, Ray C. Jones, Member, and Elmer Capshaw, Petroleum Engineer, of the Corporation Commission of Oklahoma, appeared as witnesses. Richard R. Spurrier, State Geologist and Member of the Oil Conservation Commission, testified for New Mexico.

These witnesses without exception testified that there is a direct and causal relationship between price and conservation (Texas: R. 437-439, 573-574; Oklahoma: R. 605-607, 609-611; New Mexico: R. 532). They pointed out that the states have adopted comprehensive programs designed to prevent waste and bring about the greatest ultimate recovery of gas as efficiently as possible. To this end, the states have adopted such devices, among others, as minimum prices, unitization, proration, bans against flar-

ing of gas, regulations requiring maximum utilization of casinghead gas, ratable taking, fixing of gas-oil ratios, and control of pressure maintenance and other secondary recovery operations. The effectiveness of these programs, however, depend in large part, upon voluntary compliance by producers with existing regulations and upon the cooperation of producers in developing and practicing new methods of conservation. But what producers can do to effect conservation depends largely upon economics, which are in turn controlled by the price received for the production.

The entire purport of the testimony of these witnesses is overwhelmingly to the effect that price is the most important single factor in the effectiveness of state conservation efforts. The significance of price can be seen in the history of the states' efforts to eliminate waste. Those efforts did not begin to bear real fruit until the price obtainable became realistic and gas actually became a valuable product (R. 445-456, 532). Even today, some states have found it necessary to establish minimum prices as a means of preventing waste.[7] It is not difficult to understand why these witnesses expressed real concern that the Commission's regulation of independent producers' and gatherers' rates in the field would seriously interfere with their own efforts.

Moreover, this concern was not expressed in generalities. These witnesses enumerated the specific instances where the conflict would arise, and why it would come about. Their testimony shows that regulation of independent producers' and gatherers' rates by the Commission would conflict and interfere with state regulation in each of the following respects:

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[7] *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179 (1950); *Kansas-Nebraska Natural Gas Company* v. *State Comporation Commission*, 170 Kans. 341, 225 P. 2d 1054 (1951).

Conservation Policies Relating to Price

Petitioners are each acutely aware of the direct relationship between price and conservation. Because of this relationship, Petitioners' efforts to further conservation cannot be made fully effective unless the proper price is received for the gas which is produced, gathered, and sold. Petitioners have adopted different methods for assuring that the proper price will be received, but the end sought is a common one and the different approaches to this common problem are the result of the varying situations with which Petitioners must deal. There can be no doubt that regulation of producers' and gatherers' prices by the Commission will collide with and substantially interfere with and hinder Petitioners in the furtherance of their respective policies and programs.

One of the solutions adopted by Oklahoma in dealing with this relationship is the establishment of minimum prices where competitive forces are not expected to maintain the proper balance. As a means of preventing waste and protecting correlative rights, the Oklahoma Corporation Commission on December 9, 1946, long before this proceeding was instituted, prescribed a minimum price at which gas may be produced from the Guymon-Hugoton Field (R. 1266-1276). Upon appeal to this Court from the decision of the state supreme court sustaining that order [8], this Court sustained the order as a valid conservation measure, even though interstate commerce was affected. *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179 (1950). A similar measure has been adopted by the Kansas Corporation Commission.[9]

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[8] *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 203 Okl. 35, 220 P. 2d 279 (1950).

[9] *Kansas-Nebraska Natural Gas Co.* v. *State Corporation Commission*, 170 Kans. 341, 225 P. 2d 1054 (1951).

The Court of Appeals attempted to disregard the conflict arising from this minimum price by purporting to distinguish the *Cities Service* case by holding that it applied only to wellhead sales and not to sales made at the end of gathering. But in a companion case decided the same day, this Court held that the power of the state to enforce its minimum price at the wellhead is not limited because the first sale occurs at the end of gathering. *Phillips Petroleum Company* v. *Oklahoma*, 340 U.S. 190 (1950).

In that case, Phillips sold no gas at the wellhead, but gathered it and processed it at its plants located in the gas field and sold the residue to Panhandle Eastern Pipe Line Company—one of the sales involved in this proceeding.[10] Phillips contested the validity of this order as applied to its operations. Neither the Corporation Commission of Oklahoma, the Supreme Court of Oklahoma nor this Court suggested that the order did not apply to Phillips' operations, but each said that Phillips was in compliance with the order because the sum of its receipts for liquids extracted and the residue gas was equal to the prescribed wellhead price (220 P. 2d at p. 292; 340 U. S. at p. 192). This Court held that the order was valid as applied to Phillips' operations. In the course of the opinion sustaining the order as applied to Phillips' operations this Court said in the *Phillips* case (340 U. S. at p. 192):

> "Phillips argues that it is not a purchaser but merely a producer; that unlike the situation in Cities Service, the order as applied to it lacks any connection with correlative rights, the interest of the public, monopolistic practices, or discrimination. The distinction is without a difference: the connection between

[10] Although not yet begun at the time that minimum price was established, Phillips has since begun the sale to Michigan-Wisconsin Pipe Line Company of gas which is produced in part from the Guymon-Hugoton Field and therefore subject to the Oklahoma minimum price order (R. 1691).

realized price and conservation applies to all production in the field, whether owners purchase from others or not, and whether they own pipe lines or not. *In a field which constitutes a common reservoir of gas, the Commission must be able to regulate the operations of all producers or there is little point in regulating any.*"

While Phillips did not urge the Commerce Clause as a bar to the Oklahoma order, this Court knew it was involved and passed upon that question in the companion *Cities Service* case. Thus, this Court dealt with one of the very sales involved in this case and upheld the order as it involved that sale.

The conflict with state authority in those instances where such minimum prices are fixed is obvious. But the establishment of minimum prices is not the only means by which the state can adopt a definite and precise policy with respect to the relationship between price and conservation. A considered determination by a particular state that free competition should control this relationship is as much a definitive act and a choice of methods as the establishment of a minimum price. The choice of free competition as the controlling device is the one which has, in fact, been made by Texas and New Mexico (Texas: R. 457-459; New Mexico: R. 556-557) although New Mexico adopts a slightly different approach than Texas, in that New Mexico believes that her conservation officials presently have the authority to establish minimum prices in the event they become necessary (R. 532-533).

That the choice of free competition is one of preference and not mere inaction is clear from the statements of Commissioner Murray of the Texas Railroad Commission (R. 429-431, 445-448, 457-459). In particular, he testified:

"• • • I indicated yesterday about our refusal to take jurisdiction that it has been argued we have, over setting a minimum price. It has been argued that we

already possess the authority to fix a minimum price, because if it is lower than that it is going to cause waste, and there is strong basis for such argument, but the Texas Railroad Commission—I don't mean to take issue with the wisdom of states which have done it, or I certainly don't mean to challenge our legislature if they clearly say that this is our responsibility and duty, but even though we argue the arguments on fixing prices, I say we would just stay out of that, and we want to get in and help all we can to attain conservation, but we didn't want to go to the point of saying, now, the price of gas in this near-exhausted field you were talking about, it is going to have to be twenty-five cents (25¢) a thousand because that is what it will take to recover it. Well, heck, that is more than the going price of gas and to me that wouldn't be conservation to allow them a price in order to gather that gas that is going to be worth more than it is currently worth in the open market. If we were trying to fix price purely on the basis of cost, I am afraid we'd just get hopelessly lost in a maze of situations there and we'd be fixing price up higher than anybody would pay for it. We'd have to order somebody to buy it, I guess, if we are going to set the price up to twenty-five cents and yet that might be required to conserve this gas, so all we would do from the standpoint of the philosophy of the Railroad Commission, we'd just stay out of price and we'd hope the price would be high enough to permit these reasonable things in conservation to be done. As it gets higher and higher, more and more things can be done in conservation and in turn as more and more things are being done in conservation, we save gas being wasted and make it available to the market, we are doing three billion feet of that a day in Texas and as the price gets higher and higher, the fellows are encouraged to drill for wells. Instead of passing up gas strata, they complete gas wells and that in turn makes a greater supply available and that in turn forces the price back down. In fact, that is our theory of the

only way of keeping a reasonable price of gas through the years is to have it high enough that it furnishes an incentive to conserve and explore for it and that is the surest way of, one, having abundant supply, and two, keeping the price reasonable." (R. 457-459).

In the court below, Respondents insisted that even where minimum prices are fixed, there can be no conflict until the Commission sets a rate lower than the minimum price prescribed by Petitioners. This argument misinterprets the language of this Court in the *Interstate* case. This Court there referred to "the exercise by the state of its regulatory functions." (331 U. S. at 690) But earlier in the same paragraph, this Court had emphatically stated that the states were to have "full freedom" with respect to production and gathering. The only way in which the states could have this full freedom is for the whole sphere of their control of production and gathering to be unfettered by any deterring effect stemming from regulation by the Commission. The Commission's jurisdiction therefore does not attach if rate regulation by it would in any way occupy an area in which the states are constitutionally free to act, since such action by the Commission would prevent the states from having the full freedom which this Court has held they are to have.

Any other interpretation of this Court's decision in the *Interstate* case would lead to absurd results. Under Respondents' interpretation, for example, in order for the Commission to find that it has no jurisdiction it must first exercise its jurisdiction. The very exercise of its jurisdiction, however, would then be the factor which deprived it of jurisdiction. If a price fixed by the Commission was not at that time below the minimum price fixed by the State, or if the Commission's rate applied in a State where there was no minimum price fixed, the Commission's jurisdiction could be ousted at any time if the State found it necessary

to fix a minimum price higher than the maximum fixed by the Commission. Neither the Commission nor the producer and gatherer would know how long the Commission's jurisdiction might continue. For good reason, therefore, this Court has held that no such impractical test for the determination of a conflict is to be permitted.[11]

But even if there must be an exercise of power with respect to price in order for there to be conflict, that situation exists here. Oklahoma has exercised its power by establishing a minimum price. Texas and New Mexico have exercised their power by determining that the relationship between price and conservation should be controlled by free competition. In either event, the states have acted under their conservation power and the only result of the Commission's exercise of rate-making authority would be the creation of a conflict with these powers.

Further, this Court has indicated that the test of the Commission's jurisdiction is conflict "present or *threatened*".[12] It is obvious that conflict with Petitioners' programs and policies is not only "threatened", it must necessarily follow. Regulation of producers and gatherers prices by the Commission will mean that Petitioners are no longer free to experiment and choose as to the best method to assure that the proper relationship between price and conservation is maintained. Control of that all-important tool will be

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[11] In *Bethlehem Steel Co.* v. *New York Labor Rel. Bd.*, 330 U.S. 767, 775-776 (1947), this Court said: "But the power to decide can hardly be made dependent on the way it is decided. * * * If the two boards attempt to exercise a concurrent jurisdiction to decide the appropriate unit of representation, action by one necessarily denies the discretion of the other. The second to act must either follow the first, which would make its action useless and vain, or depart from it, which would produce a mischievous conflict. The State argues for a rule that would enable it to act until the Federal Board had acted in the same case. But we do not think that a case by case test of Federal supremacy is permissible here."

[12] *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, 692 (1947).

in other hands. The result can only be that regulation of producers' and gatherers' prices by the Commission will be a stumbling block to Petitioners and will seriously interfere with and hinder Petitioners in the furtherance of their respective policies and programs.

Unit Operation

One of the most valuable techniques in the conservation of oil and gas is the unitization of fields. Oklahoma statutes provide for compulsory unitization of common reservoirs under certain conditions.[13] Texas and New Mexico have adopted voluntary unitization subject to the approval of their respective commissions.[14] In both Oklahoma and Texas, one of the facts which must be found by the state regulatory agencies before unitization is required or approval is given is that the value of the additional oil and gas recovered will exceed the added cost of such method of operation.[15] In all three states, the basis of exercising this power is to prevent waste.

One of the sales involved in this case, that to Cities Service Gas Company, is of gas produced from the West Edmond Hunton Lime Unit, created pursuant to an Oklahoma compulsory unitization statute (R. 1577, 905-918). The record indicates that 95-98% [16] of the fifty-two lessees (R. 910) in this unit are also selling their interest in the gas produced from this unit to Cities Service Gas Company under the provisions of the contract originally entered into

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[13] Sec. 287.1 et seq. Title 52, Okl. Stat. 1951. A predecessor statute was upheld by this Court in *Palmer Oil Corp.* v. *Amerada Petroleum Corp.*, 343 U.S. 390 (1952).

[14] Art. 6008 b, Rev. Civ. Stat. of Tex., 1925; Section 69-213½(e), Sections 8-1138, 8-1139, N. Mex. Stat. 1941 (1953 supp.).

[15] Sec. 287.3, Title 52, Okl. Stat. 1951; Sec. 1, Art. 688 c, Rev. Civ. Stat. of Tex., 1925 (as amended).

[16] The remainder of the unit gas is delivered to Cities Service Gas Company by Sohio Oil Company, the operator of the unit (R. 289-290).

between Phillips and Cities Service (R. 290, 631-632, 1012-1024), so that a determination that Phillips is a natural gas company by reason of this sale will in effect also determine that each of the other lessees in the unit is a natural gas company by reason of such sale.[17] Each unit lessee would thus be a natural gas company, regardless of his size or the amount of gas which he sells. Such a determination would almost certainly add another standard to Petitioners' consideration of proposed unitizations (and one *not* provided for by statute), whether unitization will tend to result in any lessee's becoming a natural gas company against his will.

A further complication with respect to unitization lies in the history of rate making by the Commission. Under its usual practice, rates are determined solely upon the basis of cost as determined for each seller.[18] Under unitization, each lessee owns an undivided interest in all gas produced anywhere in the unit, whether or not from the properties which were originally contributed by him. It would be sheer coincidence, and a most unlikely one at that, if the cost of any two lessees were exactly the same. Under regulation by the Commission, as it has heretofore been practiced, the gas produced from each well would be sold for as many different prices as there are lessees in the unit. In addition to presenting a staggering problem of determining rates for several hundred lessees in each unit, the mere prospect of such a proceeding would no doubt be sufficient to make further unitizations difficult or impossible where the principal market for the gas production is to an interstate pipe line.

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[17] There are also approximately 2500 royalty owners in this unit whose royalty payments would be affected by any regulation of the contract sales price of the gas (R. 910).

[18] Cf. *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U.S. 581 (1945); *Cities Service Gas Company* v. *Federal Power Commission*, 155 F. 2d 694 (10th Cir., 1946), cert. den. 329 U.S. 773.

Proration

Each of Petitioners is granted authority under the applicable statutes [19] to limit the production of gas to the market demand and determine the allowable production from each well. Under these statutes the entire market demand is prorated among all producers in the field and no one producer can be assured of being able to supply his own production. In Texas, for example, Jack K. Baumel, Chief Engineer of the Texas Railroad Commission, testified that it would be a "miracle" if any producers' allowable production was exactly what he needed to supply his own demand (R. 380).

The result is the absolute necessity for a free interchange or interconnecting of gas among producers in the field in order to assure each purchaser's ability to obtain the gas he needs to supply his demands. But such free interchange is practical only where producers may sell to any market without fear of being regulated as a natural gas company. Extraneous factors, such as whether the sale will be a sale for resale in interstate commerce subject to regulation and whether, once having begun a temporary sale to supply the short-term needs of an interstate transmission company, the sale may be abandoned without the consent of the Commission, will serve only to hinder and restrict the effectiveness of Petitioners' proration policies. Commissioner W. J. Murray, Jr., of the Texas Railroad Commission, testified that his Commission has already been faced with the fact that there is "considerable reluctance on the part of some and outright refusal on the part of other companies to tie into any pipe line that was under the jurisdiction of the Federal Power Commission for fear that by tying in they themselves might be subjected to the control of the Federal

[19] Art. 6008, Rev. Civ. Stat. of Tex. 1925 (as amended); Sec. 239, Title 52, Okl. Stat. 1951; Sec. 69-213, N. Mex. Stat. 1941 (1953 Supp.).

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Power Commission" (R. 473).[20] The point of his testimony was that in the future this free interchange will be even more important than it is today and that for this to come about it is essential that both producers and the Railroad Commission be able to operate free from the effects of regulation by the Commission (R. 470-476).

In addition to this effect of the Commission's jurisdiction upon the general workings of proration, there is great likelihood that regulation by the Commission would conflict with one of the specific powers of Texas to make proration workable. Under a specific statute,[21] the Texas Railroad Commission may prompt the necessary interconnecting by shutting in a producer who has an excess allowable over his market demand if it is found that such producer refuses to sell his gas at a reasonable price to a producer who has less allowable than his market demand. Fixation of prices by the Commission would usurp the Railroad Commission's functions in situations of this kind.

Ratable Taking of Gas

A correlary to Petitioners' proration powers is their authority to require the ratable taking of gas. In addition to being a conservation measure, this power also enables Petitioners to protect the correlative rights of owners of gas in a common reservoir. As the name implies, "ratable taking" means that an owner of a pipe line outlet must, where necessary for conservation or the protection of correlative rights, take gas ratably from wells of others as well as from his own. In order to enforce ratable taking, it is often necessary that the terms and conditions of the sale, including price, must be fixed by Petitioners where the

[20] This reluctance has been restated following the Court of Appeals' decision. Head, *Federal Control Can Flow Through Gas Lines,* The Petroleum Engineer, September, 1953, pp. A-37, A-51.

[21] Sec. 20, Art. 6008, Rev. Civ. Stat. Tex. 1925.

parties themselves cannot agree. An example of the problems which can arise in the enforcement of ratable taking is to be found in this Court's decision in *Republic Natural Gas Company* v. *Oklahoma,* 334 U. S. 62 (1948).

The questions raised in that case demonstrate that lacking authority with respect to the price, terms and conditions of the taking of the gas, the authority to regulate ratable taking as between producers, takers and purchasers would be ineffective. To give the Commission control over the price would be to take from Petitioners an essential element of the effectiveness of their regulation. As Commissioner Murray stated, it would "interfere gravely" with Petitioners' ability to provide for ratable taking (R. 475-476).

Saving of Casinghead Gas

Casinghead gas produced with oil presents Petitioners with one of their greatest problems. Since casinghead gas is produced as and when oil is produced, it cannot be shut in until it can more effectively and economically be gathered and marketed (R. 389). It must be gathered and marketed immediately. Gas well gas, which can be kept in the ground until needed, must not be allowed to fill markets which can be effectively served by the use of casinghead gas (R. 390). In the past, billions of cubic feet have been wasted (R. 431, 438, 524-525).

In order that the flaring of casinghead gas may be stopped, extensive and expensive gathering lines must be laid and in most instances, costly processing plants must be built in the field (R. 389). In recent years, Petitioners' efforts have substantially reduced the wastage of casinghead gas.[22] But

[22] In some instances the Texas Railroad Commission has found it necessary to adopt the drastic action of requiring that entire oil fields be shut in until a gas market is developed. For an example, see *Railroad Commission* v. *Sterling Oil & Refining Co.*, 147 Tex. 547, 218 SW 2d 415 (1949).

not all flaring has yet been stopped and much of the progress which has been made in recent years has been made practicable because of the increased value of the gas (R. 454). Future conservation measures to avoid this wastage will likewise be affected by the price of casinghead gas (R. 454-455). To give the Commission jurisdiction to limit the price of gas will seriously interfere with Petitioners' efforts to prevent the waste of casinghead gas.

Well Spacing

One of Petitioners' functions which is most directly related to price, and which will therefore be most directly affected by rate regulation by the Commission, is that of well spacing. Well spacing is directly controlled by the economics of drilling. Price is an important consideration in the determination of the size of the spacing unit. The record in this proceeding shows that Petitioners' well spacing activities are greatly affected by the "price of gas" (R. 515-516, 606, 610).

The reason that price has such a direct bearing upon well spacing is that the spacing to be established is the area which may be efficiently *and economically* drained by one well.[23] One of the important factors considered in determining what area one well will drain economically is the price which is to be expected for the gas which will be produced. If the producers can, at the expected price of gas, economically drill one well to each 160 acres, and one well will efficiently drain this area, then the drilling pattern established will be one well to each 160 acres. But if the Commission should later establish a lower price for gas, the producers may be economically able to drill only one well

[23] New Mexico statutes specifically so provide. Subsection b, Sec. 69-213½, Chap. 69, N. Mex. Stat. 1941 (1953 Supp.). In the other states, this is one of the factors considered in determining the size of the drilling units (R. 515, 605-606).

to each 320 acres, and the spacing must be changed. In the meantime, however, some producers will have drilled upon the basis of 160 acre spacing, rights will have been established, and it will be difficult if not impossible for the State regulatory agency to adjust all of these matters.

One of the essentials of successful well spacing is that the pattern be uniform. If the State must adjust the size of the drilling unit to conform to the change in economics, the pattern will lose uniformity. On the other hand, if the size of the drilling unit remains the same, many drilling units will not be drilled and the gas will be left in the ground. In either event, the objective of well spacing will be defeated.

Secondary Recovery Operations

The record in this case contains a brief but very lucid description of the various types of oil reservoirs and the important part which casinghead gas serves as a source of energy for recovering the oil (R. 391-398). Because of its importance as energy, more and more gas must go into secondary recovery operations and be returned to the reservoir in order that the energy needed to lift the more valuable oil will not be dissipated. The Railroad Commission of Texas, for example, has found it necessary on some occasions, and will find it necessary even more frequently in the future, to order that gas which is presently being marketed, much of it to interstate pipe lines, be withdrawn from that market and returned to the ground (R. 396, 403-404). It may even be necessary to use gas presently being marketed from one field for secondary recovery operations in a different field (R. 409).

Such an order is rarely an interference with contractual rights, since most contracts for the sale of residue gas from gasoline plants processing casinghead gas recognize that considerable volumes of residue gas must be returned to the leases. For this reason, these contracts provide that the

only gas which the seller is committed to sell is "surplus" gas, *i. e.*, gas which is not needed for lease uses. [24] But contractual rights to restrict deliveries and divert gas to other uses may not be controlling if the seller is declared to be a natural gas company because of the sale. At least one court has already construed a reduction in the quantity of gas delivered to be an abandonment of service under section 7(b) of the Act,[25] which is prohibited without the consent of the Commission. *Panhandle Eastern Pipe Line Company* v. *Michigan Consolidated Gas Company*, 177 F. 2d 942 (6th Cir., 1949). Another has indicated that contractual provisions of this type may be of no effect.[26]

If producers and gasoline plant operators must obtain the consent of the Commission before the quantity of deliveries can be reduced and gas diverted to such secondary recovery operations, the Commission will in effect have a veto power over Petitioners' orders requiring such operations. Even if Commission consent is obtained in every instance, the unavoidable delay inherent in securing such consent will seriously hinder Petitioners' in their efforts to secure the use of gas in such manner.

Greater Recovery—Avoidance of Premature Abandonment of Wells

To abandon oil and gas still in the ground is one of the most obvious forms of waste. It can come about either by failure to explore and develop marginal areas or by abandonment of productive wells before the ultimate in recovery has been attained. But the amount of gas that will

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[24] An example of this type of contract is the contract between Phillips and El Paso Natural Gas Company for the sale of residue gas from Phillips' Goldsmith Plant (R. 796-797).

[25] 15 U.S.C. Sec. 717 f(b).

[26] See *Mississippi Power & Light Co.* v. *Memphis Natural Gas Company*, 162 F. 2d 388 (5th Cir. 1947, cert. den. 332 U.S. 770), holding that a so-called favored-nation clause was inoperative.

be produced from any given reservoir depends to a great extent upon the price which can be obtained for the production. A low price means that marginal wells will not be drilled. The manner in which a well is equipped and the length of time it is produced are controlled by economics. Price is the determining factor.

Petitioners' definition of conservation is the attainment of maximum ultimate recovery (R. 437). Yet it has only been in recent years that here has been any intention of deliberately drilling for gas (R. 443-444). Throughout the record in this case the evidence shows that marginal areas will be drilled and wells produced to the fullest extent of their productive life only if the price is sufficient to provide an adequate incentive (R. 438-439, 459, 473-474, 532, 606-607). Thus, fixation of the price by the Commission would seriously conflict with the jurisdiction and authority of Petitioners to determine the economic limit of production and what shall be done to obtain the maximum recoverable gas.

C. *Upon The Basis of Petitioners' Evidence, The Commission Found As a Fact That Its Regulation Would Conflict and Interfere With Petitioners' Conservation Regulations.*

After finding upon the basis of other evidence before it that Phillips' operations consist of production and gathering (R. 1742), including the sales (R. 1744), the Commission considered the evidence presented by Petitioners. Upon the basis of this evidence, the Commission found:

> "In addition to the conclusions we have already reached, the evidence in this case supplies still another type of barrier to our regulation of Phillips' sales. Though technically consummated in interstate commerce, these sales are made 'during the course of production and gathering' and we expressly find that they are so closely connected with the local incidents of

that process as to render rate regulation by this Commission inconsistent or a substantial interference with the exercise by the affected States of their regulatory functions." (R. 1745).

Immediately following this finding, the Commission pointed out the specific reasons why this conflict would come about. The Commission found:

"In the first place, we affirm what is implicit in our order instituting this proceeding, namely, that if Phillips' sales were found to be jurisdictional, we would proceed with regulation of the rates charged. The impact of such regulation, in fixing just and reasonable rates under the Act, has consistently been to limit rates to an amount sufficient to recover costs plus no more than a reasonable return on actual legitimate investment.

"State regulation of the production and gathering of gas, on the other hand, is concerned with conservation; with the gathering and marketing of gas, particularly casinghead gas produced with oil, rather than flaring it; with the number, density, and location of wells in exploring and developing producing areas; with unitization of common sources of supply; and with requiring ratable taking of gas and protecting the correlative rights of the various owners, together with so-called common-purchaser statutes authorizing enforcement of nondiscriminatory taking and purchasing of gas on the part of purchasers. Regulation by Oklahoma, Texas, and New Mexico, respectively, encompasses all or part of the foregoing aspects.

"In varying degrees, the evidence clearly shows that our regulation of sales made in the process of production and gathering would, by its very nature, be inconsistent or constitute a substantial interference with such regulation of producers and gatherers by Oklahoma, Texas, and New Mexico. To cite one example, there is a direct relation between price and conservation, an important concern in the regulation of each of the States. Even though a producer be al-

lowed a reasonable return on actual legitimate investment, our fixing of maximum rates for his sales would run counter to State conservation efforts, through the fixing of minimum well-head prices or otherwise, to insure maximum recovery of gas prior to abandonment of the well. For the higher the profit, the longer it is economical to operate the well. And to the extent that the producer could obtain a profit higher than that permissible under our maximum-price regulation, the longer abandonment would be postponed. Similarly, the higher the price paid to the producer and gatherer, the easier it becomes for the State to discourage by regulation the flaring of gas and to encourage the gathering and marketing of such gas. (75) This is particularly true as to casinghead gas."

"(75) Additionally, it may be noted that the Supreme Court has observed that, 'Low valuation by the [Federal Power] Commission of producing properties or low-cost allowance for purchased gas discourages exploration for gas or its sale in interstate commerce.' Federal Power Commission v. Panhandle Eastern Pipe Line Co., 337 U.S. 498, 507 (1949)." (R. 1745-1747).

Aside from the fact that these findings are amply supported by the evidence and are therefore conclusive,[27] the real significance of these findings lies in the fact that they were made *by the very administrative agency to which Congress delegated the duty of administering the Natural Gas Act.* No other body knows its own regulations so well as the body which promulgates and administers them. No court can predict the effect of the Commission's regulations as accurately as the Commission itself. If this Court should hold that the Commission does have jurisdiction, then the effect of the decision would be a mandate to the Commis-

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[27] Natural Gas Act, Sec. 19(b), 15 U.S.C. §717 r(b).

sion to regulate in spite of the conflict which will inevitably exist.

Respondents argued before the Commission and in the court below that since there are a number of interstate pipe line companies which produce and gather gas which are regulated by the Commission, and since there had been no conflicts between the states and the Commission in the exercise of their respective regulatory powers over these companies, there would be no conflict if the Commission should regulate Phillips as a natural gas company.

There are several obvious answers to that contention, viz.:

(1) The contention merely relates to the weight of the evidence upon which the Commission's finding of fact is based. Since there is substantial evidence to support the finding that conflict and interference with state regulatory authority would result from the Commission's regulation of Phillips' sales, the finding is made conclusive by Section 19(b) of the Act. [28]

(2) There is no evidence that the Commission has ever regulated any sales by pipe line companies made during or immediately upon completion of production and gathering, such as here proposed. Regulation of a pipe line company's sales at the end of transportation can have only an indirect impact upon its production and gathering activities since the great bulk of its capital investment is in transportation facilities which serve as a cushion between its sales prices of gas and its production and gathering functions. To assume an extreme example, even though there were no allowance whatever for gas in the field or for the costs of producing and gathering it, the result might be only a slightly lower rate of return upon a pipe line company's entire investment,

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[28] Natural Gas Act, 15 U.S.C. Sec. 717 r(b).

but still leaving ample funds to comply with state regulatory orders. On the other hand, regulation of sales of an independent producer and gatherer will have a direct and immediate impact upon production and gathering. The independent has no transportation investment to absorb the shock between the reduced sales price and its production and gathering business.

Therefore, the absence of evidence of conflict or interference with state regulation of production and gathering resulting from Federal Power Commission regulation of sales prices of pipe line companies at the end of transportation furnishes no basis for any conclusion with respect to the effect of the Commission's regulation of sales by an independent producer and gatherer, such as Phillips, upon state regulation of production and gathering.

II

THE COURT BELOW ERRED IN REFUSING TO GIVE EFFECT TO THE COMMISSION'S FINDING THAT ITS REGULATION OF PHILLIPS' SALES WOULD CONFLICT AND SUBSTANTIALLY INTERFERE WITH STATE REGULATORY AUTHORITY.

A. *The Court Failed to Recognize the Importance of Conservation*

So far as Petitioners are concerned, the primary error of the Court of Appeals was its failure to recognize and appreciate the part to be played by the producing states in the scheme of regulation under the Natural Gas Act. The Court of Appeals treated the Act as nothing more than another of the devices adopted by legislative bodies to control a familiar public service function where price alone is the important consideration. It viewed the Act as though the whole field covered by the natural gas industry is as susceptible to normal utility regulation as the long line transportation segment. In so doing, it failed

to realize that the commodity with which the Act deals is an exhaustible resource, one which when used can never be replaced, and one which requires constant vigil to preserve existing supplies and continuing efforts to discover new sources of supply if it is to be of lasting benefit. The court completely overlooked the fact that conservation of gas is as important to the consumer as control of rates—machinery for controlling rates can serve no purpose if there is no gas to be sold. It was this basic oversight which we believe led the Court of Appeals to hold that conflict with state conservation policies and programs is immaterial and to intimate that no such conflict could be shown (R. 1848, note 11).

The necessity for the continued effectiveness of state conservation policies and programs is demonstrated by the evidence in this proceeding, by the provisions of the Act itself, and by this Court's decisions dealing with natural gas under the Act, and elsewhere. The evidence in this proceeding is particularly forceful in this regard. Commissioner Murray of the Texas Railroad Commission testified that:

> "If you are going to come down here and freeze a low price, then that would work to your temporary advantage. I am saying you now are representing the consumers up there, but pretty soon—that is the one thing we ran into, the courts nearly knocked our orders out on, this flared gas, because we were ordering them to do something that they could show had to be done at a loss, and by the rise in price that has taken place in the last few years, it has made it possible for us to get this billions of feet of casinghead gas utilized.
>
> "You say your consumers are paying the bill. What is a few cents a thousand when we market that gas down here—I don't know what you pay, but a few cents a thousand isn't a very big percentage of your retail price up there. The cost of transporting it and all is so much bigger than three cents, or five cents or ten

cents a thousand, and yet it means a difference down here, whether we can afford to save it and whether we can afford to drill for it and develop it. What are you going to do if we can't afford to keep on developing our gas? You'll have to double your price in order to amortize your pipe line over a short period of time and then you are out of gas.

"I am representing the Railroad Commission and we are intervening in this case, but we don't stand in Phillips' shoes here and we don't expect them to accept everything we say. Heck, we have a lot of controversy with Phillips down here. Our duty is to the consumer. There are a devil of a lot more consumers in Texas than producers, but our duty is to see they have a supply of gas over the years, and we think we are looking after the interest of consumers in Wisconsin just as much as we are in Texas."

This Court has likewise pointed out that price to the consumer is not the all-important criteria. In *Cities Service Gas Company* v. *Peerless Oil & Gas Co.*, 340 U. S. 179, 180-188 (1950), in upholding Oklahoma's minimum price regulation as a conservation measure, this Court said:

"That a legitimate local interest is at stake in this case is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources. The contention urged by appellant that a group of private producers and royalty owners derive substantial gain from the regulations does not contradict the established connection between the orders and a statewide interest in conservation. Cf. *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55 (1937).

"We recognize that there is also a strong national interest in natural gas problems. But it is far from clear that on balance such interest is harmed by the state regulations under attack here. Presumably all consumers, domestic and industrial alike, want to obtain natural gas as cheaply as possible. On the other hand, groups connected with the production and transporta-

tion of competing fuels complain of the competition of cheap gas. Moreover, the wellhead price of gas is but a fraction of the price paid by domestic consumers at the burner-tip, so that the field price as herein set may have little or no effect on the domestic delivered price. Some industrial consumers, who get bargain rates on gas for 'inferior' uses, may suffer. But strong arguments have been made that the national interest lies in preserving this limited resource for domestic and industrial uses for which natural gas has no completely satisfactory substitute. See generally, Federal Power Commission, Natural Gas Investigation (1948); *Federal Power Comm'n* v. *Hope Natural Gas Co.*, 320 U. S. 591, 657-660 (1944) (dissenting opinion). Insofar as conservation is concerned, the national interest and the interest of producing states may well tend to coincide. In any event, in a field of this complexity with such diverse interests involved, we cannot say that there is a clear national interest so harmed that the state price-fixing orders here employed fall within the ban of the Commerce Clause. *Parker* v. *Brown, supra; Milk Control Board* v. *Eisenberg Farm Products, supra.*"

Congress also was fully aware of the value of state conservation programs. Not only does Section 1 (b) of the Act exclude production and gathering from the Commission's jurisdiction, but Section 11 [29] specifically provides that the Commission shall serve as a coordinating agent in the furtherance of state compacts dealing with conservation. This expressed intent of Congress was fully recognized by this Court in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U. S. 498, 507 (1949), where this Court said:

"Before the Colorado Interstate decision, it was apparent that the value of producing facilities and cost of

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[29] 15 U.S.C. 717 j.

> gas bought by a natural gas company from producers would be weighty factors in rate making whether a rate-base method or other method for fixing rates was used. Low valuation by the Commission of producing properties or low-cost allowance for purchased gas discourages exploration for gas or its sale in interstate commerce. Congress knew this necessary relationship between production and distribution but excluded the Commission from exercising any direct control or regulation over the actual production and gathering of natural gas."

The Court of Appeals brushed aside as "immaterial" the finding of the Commission that its regulation of Phillips' sales would conflict and interfere with the exercise of the states' regulatory authority over production and gathering. The court did this because of its determination as a matter of law that Phillips' sales were made after production and gathering had been completed and, therefore, it reasoned that the sales could not be made "during the course of production and gathering" and the test laid down in the *Interstate* case did not apply. This line of reasoning is fallacious in several respects:

(1) In holding that gathering ended prior to the time the gas was delivered to the pipe line company the court exceeded its power in view of the finding to the contrary by the Commission.[30] (See *infra*, pp. 40-44.)

(2) It is incredible that this Court intended to lay down a test for excluding sales from the jurisdiction of the Commission under conditions having no practical application. Such would be the case, however, if this Court's language in the *Interstate* case should be construed so narrowly as

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[30] *Gray* v. *Powell*, 314 U.S. 402.

to exclude from the protection of the rule sales made as the last step in the gathering process. The great preponderance of sales by producers and gatherers are made at the end of production or at the end of gathering. Rarely are they made in the middle of either. And despite the Court of Appeals' interpretation to the contrary (205 F. 2d 706, 710, Note 9) there is no basis in the Act for distinguishing between sales at the end of gathering and sales at the end of production. Yet the Court of Appeals says in effect that it is not enough that sales be made as the culmination of gathering; it says that gathering must continue after the sale in order to be made "during" production or gathering within the meaning of this Court's language in the *Interstate* case.

Such an interpretation would be directly contrary to this Court's expression in the *Interstate* case that the states were to have "full freedom" to regulate in areas in which they are constitutionally competent to act. They will not have "full freedom" to regulate production and gathering even in the narrowest concept of those terms if the Federal Power Commission is privileged to strangle those operations by limiting the revenue that may be derived from them. This strangulation can occur just as effectively at the end of those functions as in the middle.

(3) As Justice Clark said in his dissenting opinion (205 F. 2d 706, 714-715), it appears probable that this Court meant "or" when it said "and" in the expression:

> "Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering, *and* are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory functions, the juris-

> diction of the Federal Power Commission does not attach." (331 U. S. 690.)

It is not difficult to conceive of a situation where transportation has intervened before the sale but where the transportation is so slight that regulation of the sales would be tantamount to regulating the sales at the end of gathering so far as the impact upon state regulatory authority of production and gathering is concerned. It probably was that kind of situation which this Court had in mind. If the sales are made "during the course of production and gathering" the impact of federal regulation would be so direct and obvious as not to require proof of conflict and interference with state authority.

The Court of Appeals evidently felt unsure of its conclusion that the sales were not made during the course of production and gathering for the court went on to say that it did not imply that it believed the findings of conflict by the Commission supportable. The court then continued:

> "On the contrary, as the Supreme Court has held, federal protection of consumers against exorbitant rates is not inconsistent with the exercise by the producing state of its regulatory functions. *Interstate Natural Gas* case, *supra*" (R. 1848, note 11).

Nothing in the *Interstate* case supports that statement. The holding is squarely to the contrary. This Court, recognizing the importance of conservation, clearly said that under the circumstances of conflict which the Commission found exist here, the jurisdiction of the Commission does not attach (331 U. S. at 690).

B. *The Commission's Finding That the Sales were Made During the Course of Production and Gathering Should be Accepted by the Court.*

The Court of Appeals concluded that "Phillips sells the gas after the time and beyond the place at which produc-

tion and gathering are complete and after processing has intervened" (R. 1842). This conclusion was in the face of and contrary to the Commission's express findings that such sales are a part of production and gathering (R. 1744) and that they are made "during the course of production and gathering" (R. 1745). The Commission also found that Phillips' gathering operations include the movement through "the relatively short lines leading from the point where processing is partly or finally completed, to the various points where sale or delivery or both take place" (R. 1743). These were the lines, which the Commission had found to be a part of the gathering process, upon which the Court of Appeals rested its conclusion that Phillips' sales are made after gathering is completed.

The lower court attempted to avoid the conclusive effect of the Commission's findings [31] by holding that what constitutes gathering is a question of law. If the court thought that the question was converted to one of law because there was no dispute as to the details of Phillips' operations, such as the movement of the gas and the location of the various points of delivery, then the court was clearly in error. In *Gray* v. *Powell*, 314 U. S. 402, 412 (1941), this Court said:

> "Although we have here no dispute as to the evidentiary facts, that does not permit a court to substitute its judgment for that of the Director. *United States* v. *Louisville & Nashville R. Co.*, 235 U. S. 314, 320; *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 304; *Helvering* v. *Clifford*, 309 U. S. 331, 336."

It is true that the Court must first decide, as a matter of law, whether by using the term "production and gathering"

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[31] Sec. 19(b) of the Natural Gas Act, 15 U.S.C. 717 r(b), provides: "The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive."

Congress intended these words to have a meaning understood in the natural gas industry, or whether Congress intended they should have some other meaning. But that question is easily answered. It is a well-established rule of statutory construction that where words are used in a statute that have both a popular and a trade or technical meaning, and as used in the statute they have reference to a trade or profession, these words in construing the statute should be given their meaning as understood by the trade or profession to which they apply.[32] As this court said in *United States* v. *Maher*, 307 U. S. 148, 155 (1939), "The recognized practices of an industry give life to the dead words of a statute dealing with it." All parties proceeded on that theory and introduced testimony before the Commission bearing upon that fact (R. 311, 368-369, 680-681, 691, 699-700). There being substantial evidence to support the Commission's findings, the Court should accept it.[33]

The question of what meaning the words "production or gathering" have in the oil and gas industry falls within the province of the Commission and not of the courts. If there be any doubt on that point it is quickly resolved by still another provision of the Act. Section 16[34] provides that the Commission shall have the power to prescribe rules and regulations necessary to carry out the Act. With respect to the definition of terms, that section specifically provides: "Among other things, such rules and regulations may define accounting, technical, and trade terms used in this act; * * *". Production and gathering are undoubtedly trade terms.

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[32] *O'Hara* v. *Luckenbach S. S. Co.*, 269 U.S. 364, 370 (1926); *Order of Railway Conductors* v. *Swan*, 329 U.S. 520 (1947); *Carter* v. *Liquid Carbonic Pacific Corp.*, 97 F. 2d 1 (9th Cir. 1938); *Roberts* v. *Tenn. Coal, Iron & R. Co.*, 255 Fed. 469 (5th Cir. 1919), cert. den., 250 U.S. 659.

[33] Natural Gas Act, Sec. 19(b), 15 U.S.C. 717r(b).

[34] 15 U.S.C. Sec. 717o.

Congress having entrusted the initial definition of these terms to the Commission, the reviewing court's function is limited to the determination of whether the Commission's interpretation has " 'warrant in the record' and a reasonable basis in law." *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 131 (1944). As this Court said in *Unemployment Compensation Commission* v. *Aragon*, 329 U. S. 143, 153-154 (1946):

> "Here, as in *Labor Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 131 (1944), the question presented 'is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially.' To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings. 'The reviewing court's function is limited.' All that is needed to support the Commission's interpretation is that it has 'warrant in the record' and a 'reasonable basis in law'."

The Commission's application of "production and gathering" is the same application, and entitled to the same finality, as the application of the term "producer" in *Gray* v. *Powell*, 314 U. S. 402 (1941), as the term "labor dispute" in *Unemployment Compensation Commission* v. *Aragon*, 329 U. S. 143 (1946), and as the phrase "arising out of and in the course of employment" in *Cardillo* v. *Liberty Mutual Co.*, 330 U. S. 469, 478 (1947). It is precisely parallel with the determination of the meaning of "transportation" in *United States* v. *Wabash R. Co.*, 321 U. S. 403, 408, (1944), and *Adams* v. *Mills*, 286 U. S. 397, 409-410 (1932), which this Court held was a question of fact which was to be sustained if supported by substantial evidence.

Further, as we have pointed out earlier, *supra*, p. 41, even considering that what constitutes gathering is a ques-

tion of law, the decision of the Court of Appeals is out of harmony with this Court's decision in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company*, 337 U. S. 498, (1949), in which this Court refused to construe the term "production or gathering" narrowly, but held that it should be construed to exclude from regulation by the Commission matters incident or related to those functions. Applied to the *Interstate* case, this means that "during the course of" includes not only everything done from the beginning to and including the end of production and gathering, but everything incident or related to those functions as well. Certainly this would include a sale as the end product of production and gathering, exactly as was found by the Commission in its order (R. 1744).

Conclusion

For the reasons stated, we respectfully submit that rate regulation by the Commission of the sales by independent producers and gatherers would be inconsistent and a substantial interference with the exercise by Petitioners of their regulatory functions. The Commission was, therefore, correct in its decision that it does not have jurisdiction over Phillips Petroleum Company and the decision of the Court of Appeals reversing the Commission should be reversed and the order of the Commission sustained.

Respectfully submitted,

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APPENDIX A

Pertinent Provisions of Statute

NATURAL GAS ACT OF JUNE 21, 1938, 52 STAT. 821-833; AS AMENDED FEBRUARY 7, 1942, 61 STAT. 459

Section 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas. [52 Stat. 821 (1938); 15 U. S. C. § 717 (1946)]

Sec. 2. When used in this act, unless the context otherwise requires—

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(6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

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Sec. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regu-

lations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own

initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivery to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [52 Stat. 822 (1938); 15 U. S. C. 717c (1946)]

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SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas. [52 Stat. 823 (1938); 15 U. S. C. 717d (1946)].

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SEC. 7. (a) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to

such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers. [52 Stat. 824 (1938); 15 U. S. C. 717f (a) (1946)]

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment. [52 Stat. 824 (1938); 15 U. S. C. 717f (b) (1946)]

(c)[1] No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such cer-

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[1] Subsection 7 (c) was amended February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83.

tificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice of hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest. [52 Stat. 825 (1938), as amended, 56 Stat. 83 (1942); 15 U.S.C. § 717f (c) (1946)].[2]

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[2] As originally enacted June 21, 1938 by Public Law No. 688, 75th Congress, Chapter 556, 3d Session [H. R. 6586], 52 Stat. 825, Section 7 (c) read as follows:

"(c) No natural-gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural-gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof: *Provided, however,* That a natural-gas company already serving a market may enlarge or extend its facilities for the purpose of supplying increased market demands in the territory in which it operates. Whenever any natural-gas company shall make application for a certificate of convenience and necessity under the provisions of this subsection, the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission.

SEC. 11. (a) In case two or more States propose to the Congress compacts dealing with the conservation, production, transportation, or distribution of natural gas it shall be the duty of the Commission to assemble pertinent information relative to the matters covered in any such proposed compact, to make public and to report to the Congress information so obtained, together with such recommendations for further legislation as may appear to be appropriate or necessary to carry out the purposes of such proposed compact and to aid in the conservation of natural-gas resources within the United States and in the orderly, equitable, and economic production, transportation, and distribution of natural gas.

(b) It shall be the duty of the Commission to assemble and keep current pertinent information relative to the effect and operation of any compact between two or more States heretofore or hereafter approved by the Congress, to make such information public, and to report to the Congress, from time to time, the information so obtained together with such recommendations as may appear to be appropriate or necessary to promote the purposes of such compact.

(c) In carrying out the purposes of this act, the Commission shall, so far as practicable, avail itself of the services, records, reports, and information of the executive departments and other agencies of the Government, and the President may, from time to time, direct that such services and facilities be made available to the Commission. [52 Stat. 827 (1938); 15 U.S.C. 717j (1946)]

* * * * *

In passing on applications for certificates of convenience and necessity, the Commission shall give due consideration to the applicant's ability to render and maintain adequate service at rates lower than those prevailing in the territory to be served, it being the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest." (52 Stat. 825 (1938))

Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83, which amended Section 7 (c), effective February 7, 1942, was enacted after the Commission's decision *In the Matter of Kansas Pipe Line & Gas Company*, 2 F. P. C. 29.

SEC. 16. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this act; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours. [52 Stat. 830 (1938); 15 U.S.C. 717o (1946)]

* * * * *

SEC. 19. (b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to

affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).